

## § 20.103

*Interested person* means a person who, as allowed in § 20.404, files written comments on a proposed assessment of a class II civil penalty or files written notice of intent to present evidence in any such hearing held on the proposed assessment.

*Mail* means first-class, certified, or registered matter sent by the Postal Service, or matter sent by an express-courier service.

*Motion* means a request for an order or ruling from an ALJ.

*Party* means a respondent or the Coast Guard.

*Person* means an individual, a partnership, a corporation, an association, a public or private organization, or a governmental agency.

*Personal delivery* means delivery by hand or in person, or through use of a contract service or an express-courier service. It does not include use of governmental interoffice mail.

*Pleading* means a complaint, an answer, and any amendment to such document permitted under this part.

*Respondent* means a person charged with a violation in a complaint issued under this part.

*Suspension and revocation proceeding* or *S&R proceeding* means a trial-type proceeding for the suspension or revocation of a merchant mariner's license, certificate of registry, or document issued by the Coast Guard that affords an opportunity for an oral, fact-finding hearing before an ALJ.

### § 20.103 Construction and waiver of rules.

(a) Each person with a duty to construe the rules in this part in an administrative proceeding shall construe them so as to secure a just, speedy, and inexpensive determination.

(b) Except to the extent that a waiver would be contrary to law, the Commandant, the Chief ALJ, or a presiding ALJ may, after notice, waive any of the rules in this part either to prevent undue hardship or manifest injustice or to secure a just, speedy, and inexpensive determination.

(c) Absent a specific provision in this part, the Federal Rules of Civil Procedure control.

## 33 CFR Ch. I (7–1–99 Edition)

### Subpart B—Administrative Law Judges

#### § 20.201 Assignment.

An ALJ, assigned by the Chief ALJ after receipt of the complaint, shall preside over each administrative proceeding under this part.

#### § 20.202 Powers.

The ALJ shall have all powers necessary to the conduct of fair, fast, and impartial hearings, including the powers to—

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule on motions;
- (d) Order discovery as provided for in this part;
- (e) Hold hearings or settlement conferences;
- (f) Regulate the course of hearings;
- (g) Call and question witnesses;
- (h) Issue decisions;
- (i) Exclude any person from a hearing or conference for disrespect, or disorderly or rebellious conduct; and
- (j) Institute policy authorized by the Chief ALJ.

#### § 20.203 Unavailability.

(a) If an ALJ cannot perform the duties described in § 20.202 or otherwise becomes unavailable, the Chief ALJ shall designate a successor.

(b) If a hearing has commenced and the assigned ALJ cannot proceed with it, a successor ALJ may. The successor ALJ may, at the request of a party, recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

#### § 20.204 Withdrawal or disqualification.

(a) An ALJ may disqualify herself or himself at any time.

(b) Until the filing of the ALJ's decision, either party may move that the ALJ disqualify herself or himself for personal bias or other valid cause. The party shall file with the ALJ, promptly upon discovery of the facts or other reasons allegedly constituting cause,